



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/627,631 Confirmation No. : 3314  
First Named Inventor : Marc G. ACHEN  
Filed : July 28, 2003  
TC/A.U. : 1644  
Examiner : P. N. Huynh  
  
Docket No. : 029065.48666C1  
Customer No. : 23911  
  
Title : Methods for Treating Neoplastic Disease  
Characterized by Vascular Endothelial Growth  
Factor D Expression, for Screening for Neoplastic  
Disease or Metastatic Risk, and for Maintaining  
Vascularization

SUBMISSION IN RESPONSE TO COMMENTS IN ADVISORY ACTION

**Mail Stop RCE**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Submission accompanies a Request for Continued Examination filed concurrently herewith.

This Submission and accompanying Request for Continued Examination are also accompanied by a Petition under 37 C.F.R. §1.136(a) for a one-month extension of time and by a credit card authorization in the amount of \$910.00 in payment of the required request for continued examination and extension of time fees.

Applicants hereby respectfully request that the document styled "Amendment after Final under 37 C.F.R. §1.116" submitted June 15, 2006 be officially entered and considered.

In addition, Applicants offer the following comments responsive to statements made in the Advisory Action mailed July 17, 2006 in the above-identified patent application. The Advisory Action stated that Applicants proposed reply of June 15, 2006 would not be entered because it raised the issue of new matter. As explanation, the Advisory Action stated:

The proposed amendment "the level of unprocessed VEGF-D polypeptide" to claims 8, 14, 18, 23, 36 and 40 raises the issue of new matter because the specification and the claims as originally filed do not have support for said phrase.

Applicants respectfully disagree.

Initially, Applicants wish to point out that the reply of June 15, 2006 did not propose any amendments. Instead, the language complained of was added to the claims by Applicants' October 5, 2005 Amendment in reply to the non-final Office Action of July 5, 2005, and no objection of new matter was made in the subsequent Final Action mailed January 12, 2006.

Moreover, Applicants note that measurement of the level of unprocessed VEGF-D is fully supported by the original specification of their application. Paragraph [0065] defines "unprocessed VEGF-D" as the full-length VEGF-D polypeptide, and Example 9 (see especially paragraph [0150]) explicitly discloses that tumors which expressed full-length VEGF-D grew significantly larger compared to control tumors which did not express VEGF-D or tumors which expressed the processed form of VEGF-D, both of which were similar to each other. It follows that measurement of the level of unprocessed or full-length VEGF-D is a useful indicator of assessing tumor presence or the likelihood of

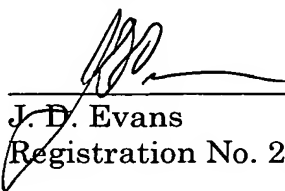
metastasis as set out in Paragraph [0192]. See also Figure 19 of the application drawings. It is also well settled in the law that the disclosure as originally filed does not have to provide *in haec verba* support for the claim language. *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1364, 67 USPQ2d 1876 (Fed. Cir. 2003). Thus the phrase "level of unprocessed VEGF-D" is fully supported by the original specification.

If there are any questions regarding this Submission or the application in general, a telephone call to the undersigned at (202) 624-2845 would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 029065.48666C1).

Respectfully submitted,

October 12, 2006

  
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